



ENTERED
03/28/2016

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

IN RE:	§	Chapter 11
	§	
ESP PETROCHEMICALS, INC.	§	CASE NO. 16-60020-H2-11
ESP RESOURCES, INC.	§	CASE NO. 16-60021-H2-11
	§	
	§	Jointly Administered Under
Debtors	§	Case No. 16-60020-H2-11
	§	Judge David R. Jones

**AGREED SECOND INTERIM ORDER AUTHORIZING DEBTORS
TO OBTAIN POST PETITION FINANCING PURSUANT TO
11 U.S.C §§ 105, 363, 364(c)(1), 364(c)(2), 364(d)(1), AND 503(b)(1)
[Relates to Doc. Nos. 25]**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) moved this Court on an emergency basis for a preliminary order authorizing for entry of an interim order authority to obtain a post-petition, secured financing facility (“the DIP Credit Facility”) from Transfac Capital, Inc. (“Transfac”) on the terms and conditions set forth in that certain Debtor-In- Possession Purchase and Sale Agreement by and between the Debtor ESPP, with a continuing guaranty executed by ESPI and Transfac and used of cash collateral, which was approved on an interim basis through March 28, 2016 (“Interim Order”) (Docket #25). The Debtors and Transfac (collectively the “Parties”) have agreed to Debtors’ continued use of cash collateral and post-petition, secured financing through April 30, 2016. The Court determines that relief should be granted as agreed to below, and therefore it is **ORDERED**:


1. The budget attached hereto as Exhibit “A” shall replace the previous budget attached as Exhibit “A” to the Interim Order (“First Budget”) with respect to Transfac (the “New Budget”).

2. Subject to all the terms and conditions of the Interim Order, the Debtors are authorized to use cash collateral and obtain post petition secured financing in accordance with the New Budget through the April 30, 2016. Debtors' use of cash collateral under the First Budget, and New Budget shall be on a rolling basis through the expiration of this Order such that unused amounts from the previous budget may be spent during the time period covered by the new budget, unless otherwise extended between the parties.
3. Notwithstanding anything herein to the contrary, the relief granted herein is without prejudice to any rights of the Texas Comptroller of Public Accounts to funds which do not constitute property of the estate but which qualify as trust funds. The Comptroller is not precluded from pursuing such funds by this Order. Any liens or claims granted to the other secured creditors are not valid or enforceable in relation to any funds which do not constitute property of the estate but which qualify as trust funds. In addition, within five (5) business days of the entry of this Order: (a) Debtor shall establish a "Sales Tax Escrow Account" ("Sales Tax Account") at an approved depository institution into which all sales taxes collected by Debtor shall be deposited; (b) once the Sales Tax Account is established, Debtor will deposit all sales tax collected by it directly into the Sales Tax Account; (c) within 48 hours of Debtor's receipt of the monthly statement for the Sales Tax Account, Debtor will provide a copy via email to counsel for the Comptroller by email to Courtney.Hull@texasattorneygeneral.gov; (d) upon one week's advance written notice to Debtor's counsel, a representative of the Comptroller may inspect the books and records of Debtor for the purpose of verifying the amount of the taxes and the balance of Debtor's Tax Account; and (e) Debtor shall file its sales tax returns and make payment of

post-petition taxes owed to Comptroller and Texas Workforce Commission on a timely basis as required by state law and by 28 U.S.C. §§ 959(b) and 960.

4. Notwithstanding anything to the contrary provided by the terms of the DIP Credit Facility, and consistent with the provisions of paragraph 3 above, Transfac shall reserve an additional 8.25% of amounts due on Accounts subject to sales tax liability under the laws of the State of Texas ("Texas Sales Taxes") from amounts otherwise to be advanced on Accounts factored pursuant to the DIP Credit Facility. Transfac shall thereafter retain amounts collected on Accounts subject to Texas Sales Taxes and not release same absent further order of this Court.
5. All representations, rights and adequate protection granted to Transfac under the Interim Order shall continue under this Order and remain in full effect, except as modified above.
6. Notwithstanding anything contained herein or in any previous Order to the contrary, the U.S. Trustee and the Official Committee of Unsecured Creditors appointed in this case shall have the right to challenge the liens and claims of Transfac under the Pre-Petition PSA provided such challenge is made by adversary proceeding filed by the earlier of (i) thirty (30) days after the appointment of the Committee, or (ii) May 2, 2016.
7. A final hearing on Debtors' EMERGENCY MOTION (I) FOR INTERIM AUTHORITY TO USE CASH COLLATERAL (II) TO INCUR POST PETITION INDEBTEDNESS UNDER 11 U.S.C. §363, §364, §502(b) AND §105 is hereby set for the May 2, 2016, at 3:30 o'clock pm., before the Honorable David R. Jones, in the United States Bankruptcy Court, Southern District of Texas, Courtroom 400, 515 Rusk, 4th Floor, Houston, Texas 77002.

3-28-2016.


David R. Jones
U.S. Bankruptcy Judge

AGREED TO AND ACCEPTED:

HOOVER SLOVACEK, LLP

/s/ Melissa A. Haselden

By: _____

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CO-COUNSEL FOR TRANSFAC CAPITAL, INC.

EXHIBIT A

ESP PETROCHEMICALS INC
 30 Day Budget
 For the One Month Ending April 30, 2016

	April
Revenues	
Cash on Hand as of March 25, 2016	\$ 91,362.58
Disbursements on Factored Invoices	242,007.02
Release on Reserves	88,195.12
Credit Card Collections on R360 Sales	84,000.00
*Sales Tax Escrow Account	<u>28,365.25</u>
Total Revenues	<u>533,929.97</u>
Cost of Sales	
Cost of Materials	60,285.00
Cost of Equipment	16,850.07
Lab Services and Supplies	2,500.00
Propane	<u>750.00</u>
Total Cost of Sales	<u>80,385.07</u>
Gross Profit	<u>453,544.90</u>
Expenses	
Auto Expenses	20,000.00
Computer Expense	2,600.00
Equipment Rent	6,000.00
Insurance Exp-Medical	20,000.00
Laundry and Cleaning Exp	1,500.00
Meals, Travel, & Lodging Expense	13,000.00
Office Expense	2,600.00
Postage Expense	800.00
Rent Expense	17,540.00
Vehicle Lease Trucks	10,000.00
Auto Repairs Expense	13,225.00
Supplies Services	2,000.00
Telephone Expense	5,251.68
Utilities Expense	4,500.00
Payroll Taxes	19,700.00
Sales Taxes	28,365.25
Insurance Exp- GL	18,929.55
Insurance Exp- D & O	3,025.65
Insurance Exp- WC Audit	13,822.00
Dues and Subscriptions Exp	400.00
Salaries Officer/Management	40,083.36
Salaries Expense	155,187.68
Legal & Professional	20,000.00
Finance Charges	3,200.00
Bank Charges-SC	800.00
Interest Expense	1,000.00
Factoring Fees	13,000.00
U.S. Trustee Fees	<u>6,825.00</u>
Total Expenses	<u>443,355.17</u>
Ending Cash	<u>\$ 10,189.73</u>

*Sales Tax Escrow Account is a blocked account reserved for sales taxes accrued on factored invoices.